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Archdiocese of Newark (i.p.a. "Archdiocese of  
Newark"), St. Theresa's R.C. Church (i.p.a. "St.  
Theresa School"), Joseph W. Cardinal Tobin (i.p.a.  
"Cardinal Joseph Tobin"), Rev. Msgr. Thomas P.  
Nydegger, V.G. (i.p.a. "Msgr. Nydegger"), Dr.  
Margaret Dames, James Goodness, Father Joseph  
Bejgrowicz, Deacon Joseph Caporaso (i.p.a. "Joseph  
Caporoso"), Sister Helene Godin, Richard Donovan,  
and Anh Bui

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

Civil Action No. 2:18-cv-12207 (MCA) (LW)

SCOTT PHILLIPS, AS GUARDIAN AD  
LITEM, ON BEHALF OF S.P., B.P. and K.P.  
and SCOTT PHILLIPS,

Plaintiff,

v.

ARCHDIOCESE OF NEWARK, et al.,

Defendants.

**DECLARATION OF  
BRIAN H. FENLON, ESQ.  
IN SUPPORT  
OF CHURCH DEFENDANTS'  
RULE 12(b)(6) MOTION**

**BRIAN H. FENLON, ESQ.**, of full age and upon his oath declares as follows:

1. I am an attorney of the State of New Jersey and am a partner in the firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., attorneys for Defendants, Roman Catholic Archdiocese of Newark (i.p.a. "Archdiocese of Newark"), St. Theresa School ("STS"), St. Theresa

R.C. Church (i.p.a. “St. Theresa School”), Joseph W. Cardinal Tobin (i.p.a. “Cardinal Joseph Tobin”), Rev. Msgr. Thomas P. Nydegger, V.G. (i.p.a. “Msgr. Nydegger”), Dr. Margaret Dames, James Goodness, Father Joseph Bejgrowicz, Deacon Joseph Caporaso (i.p.a. “Joseph Caporoso”), Sister Helene Godin, Richard Donovan, and Anh Bui (collectively the “Church Defendants”) in the captioned action.

2. I submit this Declaration in support of the Church Defendants’ Rule 12(b)(6) motion to dismiss the Complaint of Plaintiffs Scott Phillips, individually and as guardian *ad litem* for his children S.P., B.P. and K.P.

3. Annexed hereto as Exhibit A is a true copy of the Complaint filed by the Plaintiffs, which was removed to this Court by the Church Defendants.

4. While the Complaint’s Rule 4:5-1 Certification does reference “an appeal under Docket No. A-004687-17”, that pleading fails to fully disclose to the Court that the Plaintiffs’ sued the Church Defendants in a prior New Jersey state court action, *Scott Phillips, as guardian ad litem, on behalf of S.P. and B.P. v. Archdiocese of Newark, St. Theresa School, John Does 1-100, John Doe John Corporations 1-5*, Superior Court of New Jersey, Chancery Division, Essex County, Docket No. ESX-C-248-16 (the “Superior Court Action”), that said matter was tried to a plenary evidentiary hearing before the Hon. Donald A. Kessler, J.S.C., and that Judge Kessler rendered an oral opinion on August 14, 2017 in favor of the Church Defendants and Plaintiffs appealed the Trial Court’s final dismissal of said action to the Superior Court of New Jersey, Appellate Division, where it is currently pending.

5. Annexed hereto as Exhibit B is a true copy of the Transcript of the August 14, 2017 Plenary Hearing Opinion issued by Judge Kessler in the Superior Court Action.

6. Annexed hereto as Exhibit C are true copies of the May 4, 2018 and February 15, 2018 Orders entered by Judge Kessler in the Superior Court Action, which are the final orders appealed by the Plaintiffs to the Superior Court, Appellate Division.

7. Annexed hereto as Exhibit D is a true copy of the January 18, 2017 Statement of Reasons issued by Judge Kessler in the Superior Court Action to New Jersey Superior Court, Appellate Division.

8. Annexed hereto as Exhibit E is a true copy of the STS 2016-2017 Student/Parent Handbook, as referenced in the Complaint.

9. Annexed hereto as Exhibit F is a true copy of the Petition and online comments, as referenced in the Complaint.

10. Set forth hereinbelow are internet links to a representative sample of twenty four of the news/media articles and stories that were published relating to and concerning the subject disputes between the parties and the Superior Court Action. Therein, the Plaintiffs invited public comment and scrutiny upon themselves and these disputes, thereby creating a media frenzy concerning their alleged grievances against the Archdiocese, St. Theresa, and STS, the Catholic kindergarten to eighth grade school attended by K.P., S.P. and B.P.:

- a. <http://timesofindia.indiatimes.com/sports/off-the-field/family-sues-to-let-daughter-play-on-boys-basketball-team/articleshow/56142468.cms> (last accessed March 21, 2017).
- b. <https://www.thenewamerican.com/culture/education/item/25365-your-place-my-rules-parents-suing-catholic-school-so-daughter-can-play-boys-sports> (last accessed March 21, 2017).

- c. [https://www.washingtonpost.com/news/morning-mix/wp/2017/02/06/she-wants-to-play-basketball-with-the-boys-her-catholic-school-said-no-then-expelled-her-when-her-parents-sued/?utm\\_term=.dd4c849ef719](https://www.washingtonpost.com/news/morning-mix/wp/2017/02/06/she-wants-to-play-basketball-with-the-boys-her-catholic-school-said-no-then-expelled-her-when-her-parents-sued/?utm_term=.dd4c849ef719) (last accessed March 21, 2017).
- d. <http://nypost.com/2017/01/13/school-may-be-forced-to-let-girl-play-on-boys-basketball-team/> (last accessed March 21, 2017).
- e. [http://www.nj.com/union/index.ssf/2017/01/father\\_continues\\_fight\\_to\\_let\\_daughter\\_play\\_on\\_boy.html](http://www.nj.com/union/index.ssf/2017/01/father_continues_fight_to_let_daughter_play_on_boy.html) (last accessed March 21, 2017).
- f. [http://www.nj.com/union/index.ssf/2017/02/court\\_hearing\\_set\\_for\\_girl\\_expelled\\_for\\_trying\\_to.html](http://www.nj.com/union/index.ssf/2017/02/court_hearing_set_for_girl_expelled_for_trying_to.html) (last accessed March 21, 2017).
- g. [http://www.nj.com/union/index.ssf/2017/02/girls\\_battle\\_with\\_school\\_over\\_hoop\\_s\\_team.html](http://www.nj.com/union/index.ssf/2017/02/girls_battle_with_school_over_hoop_s_team.html) (last accessed March 21, 2017).
- h. <http://www.nbcnewyork.com/news/local/NJ-Family-Sues-to-Allow-Girl-to-Play-on-Boys-Basketball-Team-408090395.html> (last accessed March 21, 2017).
- i. <http://abc7ny.com/sports/family-sues-to-let-daughter-play-on-boys-basketball-team/1670136/> (last accessed March 21, 2017).
- j. <http://abc7ny.com/news/nj-girl-who-sued-to-play-on-boys-team-kicked-out-of-school/1732801/> (last accessed March 21, 2017).
- k. <http://www.pressherald.com/2016/12/23/family-sues-to-let-daughter-play-on-boys-basketball-team/> (last accessed March 21, 2017).
- l. <http://www.nbcnewyork.com/news/local/Sydney-Phillips-Girl-Sue-School-Play-Boys-Basketball-Team-Expelled-Order-Return-Judge-New-Jersey-St-Theresa-Kenilworth-412708233.html> (last accessed March 21, 2017).

- m. <http://usatodayhss.com/2016/n-j-family-sues-archdiocese-school-so-daughter-can-play-on-boys-basketball-team> (last accessed March 21, 2017).
- n. <http://www.nbcnewyork.com/news/local/New-Jersey-Girl-Who-Sued-to-Play-on-Boys-Basketball-Team-Expelled-from-School-412500713.html> (last accessed March 21, 2017).
- o. [http://www.nj.com/union/index.ssf/2017/02/new\\_archbishop\\_says\\_girls\\_can\\_play\\_ball\\_in\\_coed\\_co.html](http://www.nj.com/union/index.ssf/2017/02/new_archbishop_says_girls_can_play_ball_in_coed_co.html) (last accessed March 21, 2017).
- p. [http://www.nj.com/union/index.ssf/2017/02/coed\\_basketball\\_controversy\\_timeline\\_of\\_events.html](http://www.nj.com/union/index.ssf/2017/02/coed_basketball_controversy_timeline_of_events.html) (last accessed March 21, 2017).
- q. <http://nypost.com/2017/02/10/girl-trying-to-play-basketball-on-boys-team-not-giving-into-bullies/> (last accessed March 21, 2017).
- r. [http://www.nj.com/union/index.ssf/2017/01/girl\\_denied\\_spot\\_on\\_boys\\_basketball\\_team\\_now\\_gets.html](http://www.nj.com/union/index.ssf/2017/01/girl_denied_spot_on_boys_basketball_team_now_gets.html) (last accessed March 21, 2017).
- s. <http://www.nbcnewyork.com/news/local/Sydney-Phillips-Sued-Play-Basketball-Boys-Team-Expelled-Blocked-from-School-412605073.html> (last accessed March 21, 2017).
- t. [http://www.nj.com/union/index.ssf/2017/02/girls\\_gets\\_on\\_scoreboard\\_in\\_first\\_game\\_with\\_cathol.html](http://www.nj.com/union/index.ssf/2017/02/girls_gets_on_scoreboard_in_first_game_with_cathol.html) (last accessed March 21, 2017).
- u. <http://www.nbcnewyork.com/news/local/New-Jersey-Girl-Who-Fought-Play-Boy-Basketball-Team-Honored-Ms-Foundation-Gloria-Awards-Sydney-Phillips-Hillary-Clinton-421368553.html> (last accessed August 20, 2018)
- v. [https://www.nj.com/union/index.ssf/2017/08/judge\\_upholds\\_overturns\\_catholic\\_school\\_expulsion.html](https://www.nj.com/union/index.ssf/2017/08/judge_upholds_overturns_catholic_school_expulsion.html) (last accessed August 21, 2018)

- w. [https://www.nj.com/union/index.ssf/2017/08/scott\\_phillips\\_created\\_fear\\_at\\_st\\_theresa\\_school\\_o.html](https://www.nj.com/union/index.ssf/2017/08/scott_phillips_created_fear_at_st_theresa_school_o.html) (last accessed August 21, 2018)
- x. [https://www.nj.com/union/index.ssf/2017/08/cardinal\\_joseph\\_tobin\\_testifies\\_in\\_trial\\_of\\_st\\_the.html](https://www.nj.com/union/index.ssf/2017/08/cardinal_joseph_tobin_testifies_in_trial_of_st_the.html) (last accessed August 21, 2018)

11. Annexed hereto as Exhibit G are true copies of the Certificate of Incorporation for the Roman Catholic Archdiocese of Newark, dated October 16, 1908 (as filed in the Essex County Clerk's Office on or about October 17, 1908), and the Certificate of Change of Name to Roman Catholic Archdiocese of Newark dated on or about March 31, 1981 (filed in the Essex County Clerk's Office on or about April 19, 1981).

12. Annexed hereto as Exhibit H is a true copy of the Certificate of Incorporation of St. Theresa's R.C Church of Kenilworth, New Jersey, dated July 9, 1945 (filed in the Union County Clerk's Office on July 17, 1945).

13. Annexed hereto as Exhibit I is a true copy of the February 2, 2017 press release issued by the Archdiocese concerning and relating to the parties' subject disputes and the Superior Court Action, as referenced in the Complaint.

14. Annexed hereto as Exhibit J is a true copy of the March 22, 2017 press release issued by the Archdiocese concerning and relating to the parties' subject disputes and the Superior Court Action, as referenced in the Complaint.

15. Annexed hereto as Exhibit K is a true copy of the June 29, 2017 press release issued by the Archdiocese concerning and relating to the parties' subject disputes and the Superior Court Action, as referenced in the Complaint.

16. Annexed hereto as Exhibit L is a true copy of the June 30, 2017 press release issued by the Archdiocese concerning and relating to the parties' subject disputes and the Superior Court Action, as referenced in the Complaint.

17. Annexed hereto as Exhibit M is a true copy of the August 14, 2017 press release issued by the Archdiocese concerning and relating to the parties' subject disputes and the Superior Court Action, as referenced in the Complaint.

I hereby declare under penalty of perjury that the foregoing statements are true and accurate.

Dated: September 4, 2018

By: 

BRIAN H. FENLON

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